

ADMINISTRATIVE APPEAL

OF

JOE McCOMAS

IBIA 76-27-A

Decided June 11, 1976

Appeal from a decision of the Commissioner, Bureau of Indian Affairs, affirming decision of the Anadarko Agency Acting Superintendent declaring farming and grazing lease no. 31395 void.

Affirmed.

1. Indian Tribes: Constitution and Bylaws--Indian Tribes: Tribal Authority

Acts of Tribal Chairmen done in contravention of their respective Tribal Constitutions and Bylaws are void from their inception and not binding upon their respective Tribes.

2. Federal Employees and Officers: Authority to Bind Government

Unauthorized acts by an employee of the Bureau of Indian Affairs cannot serve as the basis for conferring rights not authorized by law. Moreover, neither the Secretary of the Interior nor the Department is bound or estopped by such unauthorized acts.

APPEARANCES: Pain and Garland, by John W. Garland, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The above-entitled matter comes before the Board on appeal from the decision of the Commissioner of Indian Affairs dated December 12, 1975, affirming the decision of the Acting Superintendent, Anadarko Agency, dated April 17, 1975, invalidating farming and grazing lease No. 31395 covering lands of the Wichita, Delaware and Caddo Tribes containing approximately 327 acres.

The Acting Superintendent concluded in his decision that the purported lease was void from its inception because the tribal chairmen executed said lease without the benefit of enabling

resolutions of their respective Executive Committees authorizing their actions as provided for by their respective constitutions and bylaws.

Joe McComas appealed the Acting Superintendent's decision to the Area Director who, by decision of June 4, 1975, sustained the Acting Superintendent. An appeal was then taken to the Commissioner, Indian Affairs, who in turn by decision of December 12, 1975, affirmed the decision of the Acting Superintendent. A timely appeal was then taken to this Board.

The Appellant in substance contends that the decision of the Acting Superintendent is contrary to law. We disagree.

The Act of June 18, 1934, c. 576 § 16, 48 Stat. 987, provides, among other things, that:

Any Indian tribe, or tribes, residing on the same reservation shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe * * *.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: * *. * to prevent the sale, disposition, lease * * * of Tribal lands * * * without the consent of the tribe * * *. 25 CFR 476. [Emphasis added.]

Article VI of the Constitution and Bylaws of the Delaware Tribe of Western Oklahoma provides that--

The executive committee shall have full authority to act on behalf of the tribe in all matters upon which the tribe is empowered to act now or in the future * * *.

Article V of the Constitution and Bylaws of the Caddo Indian Tribe of Oklahoma provides that--

Section 1. There shall be an Executive Committee which shall consist of the officers provided in Article IV. This committee shall have the power to appoint subordinate committees and representatives, to transact business and otherwise speak or act on behalf of the Caddo Indian Tribe in all matters on which the said Indians are empowered to act now or in the future * * *.

Article V of the Governing Resolution of the Wichita Indian Tribe provides that--

There shall be an Executive Committee which shall consist of the officers and councilmen as provided in Article IV. This Committee shall have power to appoint subordinate committees and representatives, to transact business and otherwise speak or act on behalf of the Tribe in all matters on which the Tribe is empowered to act now or in the future.

The Secretary of each of the Tribes is required to keep an accurate account of all proceedings and official records of the council and the executive committees.

Section 131.3(4) of the Departmental regulations provides that tribes or tribal corporations acting through their appropriate officials may grant leases. See 25 CFR 131.3(4).

It appears from the record that lease No. 31395 was never before any of the named tribal executive or business committees for consideration. Although the Appellant indicates that he was present at a joint meeting of the three tribes at the Brown Office Building, Anadarko, Oklahoma, at which said lease was purportedly presented to the three tribes for consideration, it has not been corroborated by tribal resolution, minutes, or other evidence that said lease contract was approved by joint tribal executive or business committees. Instead, it appears that lease contract No. 31395 was executed by tribal chairmen of the three tribes without authorization from the respective executive or business committees.

The record includes individual affidavits of the tribal chairmen wherein they indicate that they intended to bind their respective tribe and that they believed that they had acted properly.

The record further includes an affidavit of Harry Guy, Chairman of the Caddo Tribe, executed subsequent to the above affidavits wherein he contradicts his previous affidavit by stating that he signed the affidavit without full knowledge of all the facts pertaining to the subject lease and that it is now his intention not

to bind the tribe for the term of the lease. Moreover the Appellant indicates that he had leased the land in question on prior occasions and in all said negotiations he had always dealt only with the tribal chairmen (after dissolution of the Land Management Committee), who held themselves out as having authority to lease this property.

[1] We find that lease No. 31395 was executed by the tribal chairmen of the Delaware, Caddo and Wichita Tribes in contravention of their Tribal Constitutions and Bylaws and without authorization from their respective executive or business committees and consequently said lease was void from its inception and not binding on their respective Tribes.

[2] We further find that the Superintendent, Anadarko Agency, approved the said lease in the mistaken belief that the tribal chairmen had the authority to execute the same in accordance with their respective Tribal Constitutions and Bylaws. Moreover, we find that neither the Secretary of the Interior nor the Department is bound or estopped by such unauthorized acts.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Commissioner, Indian Affairs, sustaining the decision of the Acting Superintendent, Anadarko Agency,

dated April 17, 1975, be and the same is hereby AFFIRMED and the appeal DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

We concur:

Alexander H. Wilson
Administrative Judge

Wm. Philip Horton
Board Member